

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

HAYWARD INDUSTRIES, INC.,

Plaintiff

v.

BLUEWORKS CORPORATION,
BLUEWORKS INNOVATION
CORPORATION, NINGBO C.F.
ELECTRONIC TECH CO., LTD; NINGBO
YISHANG IMPORT AND EXPORT CO.,
LTD.

Defendants.

Civil Action No. 3:20-CV-710 -MOC-SCR

**Emergency Motion for Clarification of this Court's
Ex Parte Temporary Restraining Order [DE 393] Entered April 11, 2024**

On April 11, 2024, this Court granted Plaintiff Hayward Industries, Inc.'s ("Hayward") *Ex Parte Motion for Temporary Restraining Order* [DE 382 Ex Parte] (hereinafter the "TRO Order") and set a hearing April 23, 2024. Defendants Blueworks Corporation, Blueworks Innovation Corporation, Ningbo C.F. Electronic Tech Co., Ltd., and Ningbo Yishang Import and Export Co., Ltd., (collectively "Defendants"), request **Clarification** as to the scope of the TRO Order.

I. The TRO Order

En route to granting the TRO Order, the Court repeatedly stated that the TRO Order is necessary to prevent Defendants: from "**transferring** assets ... to entities beyond this Court's jurisdiction" [DE 393 at 2] (emphasis added); from "**mov[ing]** assets beyond this Court's jurisdiction" [DE 393 at 3] (emphasis added); to prevent Defendants from "**convey[ing] assets** to Chinese citizens like Plaintiff's [sic] mother and brother, who have stakes in the Ningbo Defendants" [DE 393 at 3] (emphasis added); and to prevent "potential **flight [of assets]** beyond

this Court’s jurisdiction” [DE 393 at 5] (emphasis added). In the “Conclusion” the Court states that “all four *Winter* factors favor granting Plaintiff’s request for an *ex parte* order temporarily restraining Defendant from **transferring assets**.” [DE 393 at 6] (emphasis added). The Court also repeatedly refers to the TRO Order as ordering “freeze” of assets, using the term “freeze” at least seven times.

The TRO Order states that Defendants are “ENJOINED from facilitating or allowing any withdrawal, transfer, or disposition of assets presently held in any bank accounts owned or controlled by Defendants.” [DE 393 at 7].

In short, the expressly stated purpose of the TRO Order, at least as Defendants understand the Order, is to prevent the extraterritorial **transfer** of assets outside of this Court’s jurisdiction, *i.e.*, transfers to China.

II. Defendants’ Ordinary Business in the United States

The Order also correctly notes that Defendant Blueworks Corporation is “an American corporation” and has “two employees and a home office” in the United States. [DE 393 at 4]. As with any business, in the ordinary course, Blueworks must pay its employees, pay utilities, pay taxes, and pay US based vendors including professionals such as accountants.

Defendants seek to fully comply with the Court’s TRO Order. Accordingly, Defendants seek clarification as the scope of the TRO Order. Specifically: Defendants understand that transfers of assets outside of the United States and outside of the ordinary course of business are forbidden during the period of the TRO Order. However, Defendants require clarification on the following:

Does the TRO Order allow Defendants to pay its employees (including its North Carolina based employees), to pay taxes, to pay utilities, to pay its vendors (including accountants and attorneys), and to pay other expenses in the ordinary course of business from its accounts including merchant accounts?

III. Conclusion

The Court's expedited consideration of this Motion for Clarification is respectfully requested.

Dated: April 11, 2024

Respectfully submitted,

/s/ Christina Davidson Trimmer

Christina Davidson Trimmer

NC Bar No. 44857

Samuel Alexander Long, Jr.

NC Bar No. 46588

SHUMAKER, LOOP & KENDRICK, LLP

101 South Tryon Street

Suite 2200

Charlotte, North Carolina 28280

Tel: (704) 375-0057

Fax: (704) 332-1197

Email: ctrimmer@shumaker.com

along@shumaker.com

Michelle C. Dunn

Platinum Intellectual Property

3031 Tisch Way, Suite 110 PW

San Jose, CA 95128

Tel: 404-800-5884

Fax: 877-463-0654

Email: michelle.dunn@platinum-ip.com

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on April 11, 2024, the foregoing document was served on all counsel of record using the Court's CM/ECF system, which will send notification of such filing to any CM/ECF participants.

Respectfully submitted,

/s/ Christina Davidson Trimmer

Christina Davidson Trimmer

NC Bar No. 44857

SHUMAKER, LOOP & KENDRICK, LLP

101 South Tryon Street

Suite 2200

Charlotte, North Carolina 28280

Tel: (704) 375-0057

Fax: (704) 332-1197

Email: ctrimmer@shumaker.com